IN THE HIGH COURT OF UTTARAKHAND AT NAITNIAL
CRIMINAL APPEAL NO. 116 OF 2006
(Old No. 667/1986)

1. Pharendra Tiwari
2. Vedanand Tiwari
3. Raghupat Tiwari
   All Sons of Sri Sagar Tiwari.
4. Pramod Tiwari S/o Raghupat Tiwari
5. Bhupendra Tiwari S/o Sri Avadh Narain Tiwari
6. Satish Tiwari S/o Sri Balram Tiwari.

.....Appellants

Versus

The State ....Opposite Party

Dated: July,6 2007

Sri M.K. Goyal, learned counsel for the appellants.
Sri Amit Bhatt, learned Addl. GA and Sri M.A. Khan, Ld. Brief Holder for the State.

HON. DHARAM VEER, J.

This appeal, preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 18.02.1986 passed by II Additional Sessions Judge, Nainital, in Session Trial No.228/1983 State Vs. Pharendra Tiwari and others, whereby, the learned II Additional Sessions Judge has convicted the appellants under Section 147/323 of the Indian Penal Code, 1860 (hereinafter to be referred as I.P.C.) and the appellants were directed to release on probation of good conduct. They were directed to be released on their entering into a personal bond and one surety of Rs. 2000/- each to appear and receive sentence when called upon during one year and in the meantime, they were directed to keep peace and be of good behaviour.

They went to the house of appellants to know the cause of the incident alleged to be committed by them on 9.01.1983. The appellants Pharendra Tewari, Anil Tiwari, Pramod Tiwari, Raghupati Tewari, Bhupendra Tewari, Vedanand and Satish were taking heat from the heap of the Pual. When these appellants saw the complainant and others, they said, come, let the matter be decided today. ("Aaoo, Aj hi faisla kiya dete hain"). Then they began throwing stones on them and in the meantime, Anil Tewari brought the gun of this father from his house. In pursuance of the common object, Anil Tiwari used the gun and fired from that gun. Due to this act, mother of the complainant Smt. Chhoti Devi sustained injuries of gunshot and Amarnath also got the injuries of gunshot and Ravindra Nath Ojha got the injuries of stones. This occurrence was seen by villagers of the village. He sent his mother Smt. Chhoti Devi and Amarnath to the Civil Hospital with the help of villagers. After that, he came to the Police Station and has moved this application. On the basis of this application, a case under Sections 147, 148, 149, 307 and 336 I.P.C. was registered against the appellants. The application submitted by the complainant Phateh Bahadur Chaudhary is Ex.Ka.4. On the basis of this application, a chick F.I.R. was prepared by PW.6 Head Constable, Chandra Kiran Tyagi, that chick FIR is Ex.Ka. 7 and he has made the entry in the G.D. at 8:55 A.M., the copy of G.D. is Ex.Ka.8. This F.I.R. was lodged in the Police Station, Rudrapur, at 8:55 A.M. on 10.01.1983. The distance of the police station from the place of occurrence is 7 kms. The investigation of case was entrusted to S.I., S.P. Singh, PW.8 who has started the investigation on the same day. The injured Smt. Chhoti Devi was medically examined

Ex.Ka.2 is the injury reprot of Amar Nath prepared by the doctor. Sri Ravindra Nath Ojha P.W.4 was also examined by the same doctor on 10.01.1983 at 1.05 P.M. and his injury report Ex.Ka.3 was prepared. The Investigation Officer has prepared a Fard of the blood Stained heap of Pual for taking in his possession on which Smt. Chhoti had fallen down after receiving the injury i.e. Ex.Ka.5. He has also taken a Tickly Gatta in his possession and a Fard Ex.Ka.6 was prepared. Ex.Ka.9 is the site plan of the spot prepared by the Investigation Officer. After completing the investigation of the case, the Investigation Officer had submitted the charge sheet against the appellants Ex.Ka.10 on 4.03.1983 under Sections 147, 148, 149, 307 and 336 I.P.C.

3. The Chief Judicial Magistrate, Nainital had committed the case to the court of Sessions on 8.12.1983 u/s 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. The II Additional Sessions Judge, Nainital framed the charge against the appellants under Section 147 IPC, 307 r/w 149 IPC and 323 I.P.C. on 30.07.1984. The charge was explained to the appellants who pleaded not guilty and claimed to be tried. The charge against the accused Anil Tewari was also framed on 30.7.1984 u/s 148 IPC and 307 IPC. He also pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution examined PW. 1 Dr. P.K. Tyagi, who had examined the injured person, PW.2 Phateh Bahadur Chaudhary, complainant of the case, PW.3 Atmanand Verma, PW.4 Ravindra Nath Ojha, who is the Pradhan and an

filed any oral evidence in the defence, but had filed documentary evidence in their defence, that are Ex.Kh. 1 to Ex.Kh. 10.

7. After appreciating the evidence and considering all the facts and circumstances of case and hearing the counsel of parties, the learned II Additional Sessions Judge, Nainital has convicted the appellants under Section 147/323 I.P.C. and directed the appellants to be released on probation of good conduct. They were directed to be released on their entering into a personal bond and one surety of Rs.2000/- each to appear and receive sentence when called upon during one year and in the meantime, they were directed to keep peace and be of good behaviour.

8. I have heard Sri M.K. Goyal, learned counsel for the appellants and Sri. Amit Bhatt, leanred Addl. GA and Sri M.A. Khan learned brief holder for the State.

9. PW. 1 is Dr. P.K. Tyagi, who had stated that on 10.01.1983, he was posted as Medical Officer in J.L. Nehru, Hospital, Rudrapur. On that day at 9:40 A.M., he had examined the injuries of Smt. Chhoti Devi who was brought to him by Sri Jagdambika Singh. At the time of medical examination, he had found the following injures on her person:

1. *Gun shot wound of entrance on the outer aspect of the right upper arm 1/3 cm x 1/3 cm depth lost in deeper tissues with lacerated and inverted margins. Direction lost in tissues. No. charring, no soot present. Echymosis present. Situated 10.5 cm above the posterior axillary fold of right axilla. No wound of exit seen. Kept under observation. X-ray advised.*
2. *Gun shot wound of enterence on the left breast at 8 O'clock position (at the margin of arcola inner side) 1/3 cm x 1/3 cm x depth lost in deeper tissues, direction medico latrally. No soot*

present. Echymosis present. Fresh blood coming out. No. wound of exit seen.

5. *Gun shot wound of entry on the right side of abdomen 3.0 cm lateral at right angle to emblicus 1/3 cm x 1/3 x depth lost in abdomen. Margins inverted and lacerated. Direction lost in tissues. No soot. No charring present. Echymosis present. Fresh bleeding present No wound of exit seen.*
6. *Abrasion on the right forearm extensor aspect 2.0 cm x 1.0 cm situated 6.0 cm below the elbow in flexed position. Echymosis present.*

He has stated that the general condition of the patient was poor and S.D.M. Rudrapur, was called on for dying declaration. X-ray for the left side of the chest, abdomen and right upper arm was advised. The injuries were fresh. He has stated that injury Nos. 1,2,3,4 and 5 were kept under observation. Injury no. 6 was simple. Injury Nos. 1 to 3, 4 and 5 were caused by firearm and injury No.6 was caused by hard and blunt object.

On 10.01.1983, he has also examined injured Amar Nath at 10:45 A.M., who was brought to him by the father of the injured. He has found the following injuries on his person:-

"Gun shot wound of entrance on the left palm on the radial side with lacerated and inverted margins 1/3 cm x 1/3 cm x depth lost in deeper tissues, direction upward to downward, No soot, no charring, Echymosis present. Fresh bleeding present. Situated just below the wrist joint. No wound of exit seen. Kept under observation. X-ray advised."

He has further stated that the injuries were kept under observation and could possibly be caused by firearm and the injuries were fresh.

ON the same day on 10.01.1983 at 01:05 P.M., he has examined injured Ravindra Nath Ojha and he found the following injures on his body:-

1. *Bruse on the radial border, extensor aspect of right forearm 2.0 cm x 1.0 cm situated 2.0 cm above the wrist joint. Color red.*
2. *Abrasion on the medial side of right let 1.0 cm x 0.2 cm situated 7.0 cm above the right ankle joint. Abrasion not scaled.*

He has further stated that both the above said injuries were

further stated the injuries of Ravindra Nath Ojha could possibly be caused by stones.

In the cross-examination, he has stated that on 10.01.1983 at about 11:30 A.M. he had examined Raghupat Tewari and he has found the following injuries on his person:

1. *Abrasion on the right side of face adjacent to the nose 5 cm x 1.05 cm surrounded by bruise with swelling on whole right cheek. Oozing from abrasion present. Colour of bruise red.*
2. *Bruise with swelling on the extensor aspect of left forearm 4.5 cm x 4 cm. situated 4.5 cm above the left wrist joint. Colour of bruise red.*

He has stated that both the injuries could possibly be caused by hard and blunt object and injury no. 1 was simple and injury no.2 was kept under observation. He had also proved the copy of the injury report, Ex.Kha.1.

10. PW.2 is Phateh Bahadur, who is the complainant of the case, has stated that Raghupat Tiwari, Bhupendra Tiwari, Satish Tewari, Vedanand Tewari, Phrendra Tewari, Pramod Tewari and accused Anil were known to him before the incident and they were related to each other. Before the incident, there was an election of Pradhan in his village and in that election, he had supported Ravindra nath Ojha and for this reason, Pharendra Tiwari had enmity with him. He had further stated that on 09.01.1983 about 7 to 8 P.M., Satish Tiwari and Bhupendra came to his house in drunken state and they had abused him for the reason that he had supported Ravindra Nath Ojha in the election. Before one day, they had also abused him in the way. After abusing him, both of these appellants had gone from his house. In the night, he had come to the respected persons of the village and then in the morning of 10.01.1983 at 6 o'clock, he went to the house of Ravindranath Ojha and has narrated the entire incident of the last night. After that, he went towards the

Raghupat Tiwari and complained him about the last night incident. Thereafter, Phrendra Tiwari had also reached there and asked furiously, why they had come there. In the meantime, Phrendra Tewari had called his nephews. Satish, Pramod, Bhupendra and his son Anil were also sitting there near the heap of Pual. He felt that these people had a plan to attack him, hence they started to go back. Then the appellants had thrown stones on them. Ravindra Nath Ojha had got the injuries of stones. Meanwhile, Anil Tewari took the gun of his father and had fired. From that fire, the mother of the complainant, Smt. Chhoti Devi had got the injuries. Amar Nath had also got the injuries from that gunshot because Amar nath was also along with them and Chhoti Devi had also come with him. After receiving the injuries of the gunshot, his mother Chhoti Devi had fallen down on the heap of the Pual. After hearing the noise, the villagers had reached there and after seeing the villagers, the appellants had run away from there. Smt. Chhoti Devi and Amar Nath were sent to Civil Hospital in a Tractor Trolley. His mother was admitted in the Hospital and he had lodged the F.I.R. in the Police Station that is Ex.Ka.4. This witness was cross-examined at length but nothing has come out from his evidence, which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable, and believable.

11. PW.3 is Atma Nand Verma, who has stated that the appellants Pharendra, Raghupat, Satish, Vedanand, Bhupendra, Pramod and accused Anil were known to him. The incident was about one year before. He was in his house, the time was about 7:00 A.M. in the morning. After hearing the noise, he had come

had a gun in his hand and he made two fires from his gun due to which mother of Phateh Bahadur and Amar Nath got the injuries. This witness was also cross-examined at length but nothing has come out from his evidence, which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

12. PW.4 is Ravindra Nath Ojha, who had stated that in the year 1983, he was elected as Pradhan of the village Bagwala. Before him Pharendra Tiwari was elected as Pradhan. He had won the election in 1982-83. The appellants Satish and Bhupendra were the nephews of Pharendra Tewari and these people had enmity due to the reason that Pharendra Tiwari had lost the election. Occasionally, these people used to abuse him and his supporters. On 9.01.1983 at 7 to 8 P.M., these people had reached in the house of Phateh Bahadur and abused him. This fact was told to him by Phateh Bahadur. On 10.01.1983 at 7-7.30 A.M., he had gone along with Phateh Bahadur, Shivbachan and Surendra etc. to the house of Pharendra Tiwari for complaining about the incident happened in the house of the complainant/Phateh Bahadur in the last night. In the way, he had seen Bhupendra Tiwari who was sitting near the Alau for taking the heat. He asked from him about Pharendra Tiwari but he did not give any answer. Just after that Raghupat Tiwari had met him outside his house. He had complaint to Raghupat Tiwari about the act committed by Satish and Bhupendra in the last night. In the meantime, Pharendra Tiwari had reached there and Vedanand Tiwari was also sitting near the heap of the Pual for taking heat. Pharendra Tiwari felt annoyed and called his son

he had also hurled some stones on them. In the meantime, Anil had come with the gun in his hand and on provoking by the other appellants, he had fired twice by which the mother of Phateh Bahadur got the injuries and Amar Nath had also got the injuries of gunshot. He had got the injuries of stones. The mother of Phateh Bahadur and Amar Nath were sent to the Hospital for medical examination. This witness was also cross-examined at length but nothing has come out from his evidence which may create any doubt in his evidence The evidence of this witness is trustworthy, reliable and believable.

13. PW.5 is Anand Prakash who has stated that Investigation Officer had taken blood stained Pual in his possession. A Fard was prepared there and he had proved his signatures on this Fard, that Fard is Ex.Ka.5. He had further stated that the Investigation Officer has taken a Gatta Tickly in his possession and a Fard was prepared, that Fard is Ex.Ka.6.

14. PW.6 is Chandra Kiran, Head Constable, who has stated that on 10.01.1983, he was posted as Head Moharrir in Police Station, Rudrapur. On that day, Phateh Bahadur at 8:55 A.M. had given a complaint Ex.Ka.4, on the basis of which he had prepared a chick F.I.R., Ex.Ka.7. The entry was made in the G.D. as Report No.25 at 8:55 A.M., the copy of the G.D. is Ex.Ka.8. In cross-examination, he had stated that on the same day at 8:45 A.M., Raghupat Tiwari had also lodged the F.I.R. in the Police Station, he had field the copy of G.D., that is Ex.kha.2.

15. PW.7 is Smt. Chhoti Devi who is an injured witness. She had stated that the appellants were belonging to her village and

also gone behind them. When she reached near the Pual of Om Prakash Shukla, then she saw that his son and other people were coming back in running condition and the appellants were throwing the stones on them. She saw the gun in the hand of Anil Tiwari. She was standing near the Pual. Pharendra Tiwari and others have asked Anil to fire on them. Then Anil Tiwari had fired twice and she had got the injury by this fire, one another person also received the injury from the fire. After receiving the injury, she fell down on the Pual and she was medically examined on the same day in the hospital. This witness was also cross-examined at length but nothing had come out from his evidence, which may create any doubt in her evidence. The evidence of this witness is trustworthy, reliable, and believable.

16. PW.8 is S.I., S.P. Singh, Investigation Officer, who has stated that in 1983, he was posted as Sub-Inspector in the Police Station, Rudrapur. He had conducted the investigation of this case. He had recorded the statements of the witness and prepared the site plan. On the pointing out of the witnesses, he had prepared the site plan that is Ex.Ka.9 He had also prepared the Fards Ex.Ka.5 and Ex.Ka.6. After completing the investigation, he had submitted the charge sheet against the appellants on 4.03.1983, that charge sheet is Ex.Ka. 10. He had proved the blood stained Pual and Gatta Tickly wich was taken out from the seal mohar bundles, that are Ex. 1 and Ex.2.

17. After that, the statements of the appellants were recorded under Section 313 Cr.P.C. They have denied the allegations made against them. They did not produce any oral evidence in

19. From the evidence discussed above, it is clear that PW.2 Phateh Bahadur in the Pradhan's election had supported Ravindra Nath Ojha and for this reason, Pharendra Tewari and other appellants had enmity with him. Before one day, the appellants had also abused him in the way. On 9.01.1983 at about 7 to 8 P.M. in the night, appellants Satish and Bhupendra had went to the house of Phateh Bahadur in drunken position and abused him. This fact was brought into the notice of Ravidnra Nath Ojha, Present Pradhan of the village. Then in the next day morning on 10.01.1983 at about 7 A.M. when PW.2 Phateh Bahadur along with Pradhan, Ravvindra Nath Ojha, Shivbachan, Surendra etc. went towards the house of Pharendra Tiwari, then he has inqured about Pharendra Tiwari and Raghupat Tiwari from Bhupendra but he did not give any answer. Thereafter, Pharendra Tiwari had also reached there and asked furiously as to why they had come there. In the meantime, Pharendra Tiwari had called his nephews. Satish, Pramod, Bhupendra and his son Anil were also sitting there, when he felt that these people had plan to attack him, then he started to go back and then the appellants had started throwing stones on them. Ravindra Nath had got the injures of stones. Meanwhile, Anil Tewari had taken the gun of his father and had fired. From that fire, the mother of the complainant Smt. Chhoti Devi had got the injuries. After receiving the injuries of gunshot, his mother Smt. Chhoti Devi had fallen down on the heap of Pual. Amar Nath also received the gunshot injuries, from the fire made by Anil. After hearing the noise, the villagers had reached there and after seeing the villagers, appellants had ran away from there. PW.4 is Ravindra Nath Ojha, who had stated that in

Satish and Bhupendra Tewari had reached to the house of Phateh Bahadur and abused him. On 10.01.1983 at about 7 A.M. he along with Phateh Bahadur, Shivbachan and Surendra had gone to the house of the appellants to convince them. They had gone to the house of Pharendra Tiwari for complaining about the incident happened in the house of the complainant/Phateh Bahadur in the previous night. He had complained to Raghupat Tiwari about the act committed by Satish and Bhupendra in the last night. Then Pharendra Tiwari came there and felt annoyed and called his son and nephews who were sitting near the heap of Pual outside the house of Bhupendra Tiwari. Appellant Pharendra Tiwari had asked his other companions, i.e. appellants to beat him. After seeing the anguishness, intention and object of the appellants, he tried to go back from his house, then all the appellants started throwing stones on them. Then for their defence, this witness also pelted some stones on them. In the meantime, Anil had come with the gun in his hand and on provoking by the other appellants, he had fired twice due to which Smt. Chhoti Devi, the mother of Phateh Bahadur and Amar Nath got the injuries of gunshot. Smt. Chhoti Devi, Amar Nath and Raghunath Ojha were medically examined by Dr. P.K. Tyagi, PW.1. He has also prepared the injury reports of above said persons i.e. Ex.Ka.1, Ex.Ka.2 and Ex.Ka.3. Hence, the evidence of these witnesses are duly corroborated by the medical evidence of PW. 1 Dr.P.K. Tyagi and also from the evidence of the Atmanand Verma P.W.3.

20. From the evidence discussed above and on the facts and circumstances of the case narrated above, it is well established

common object and with a common intention along with the other appellants. Thus, it is clear that these appellants had formed an unlawful assembly with common object and common intention to cause injuries to Ravindra Nath Ojha, Smt. Chhoti Devi and Amar Nath by committing violence and throwing stones and using the firearms. Thus, on the basis of the above said facts and circumstances, the case under Section 147/323 IPC is proved against the appellants beyond reasonable doubt.

21. For the reasons recorded above, it is ample clear that the appellants have committed the offence punishable under Section 147/323 I.P.C. and the learned II Additional Sessions Judge, Nainital has rightly convicted them under the aforesaid sections and awarded sentence by way of probation of good conduct. They were rightly directed to be released on their entering into a personal bond and one surety of Rs. 2000/- each to appear and receive sentence when called upon during one year and in the meantime, they were directed to keep peace and be of good behavior by entering into a personal bond with one surety. Hence, the sentence awarded to them is sufficient as per the circumstances and nature of the crime committed by them.

22. Thus, I do not find any irregularity or illegality in the judgment and order date 18.02.1986 passed by II Additional Sessions Judge, Nainital. The appeal is devoid of merit and is accordingly dismissed.

(Dharam Veer, J.)

July, 6 2007
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